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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 84

OBED M. LASSEN, Commissioner, State Land Department, *Petitioner*,

v.

ARIZONA EX REL. ARIZONA HIGHWAY DEPARTMENT, *Respondent*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR THE STATE OF WASHINGTON AS AMICUS CURIAE

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BRIEF FOR THE STATE OF WASHINGTON AS AMICUS CURIAE

The State of Washington[1] files this brief as *amicus curiae* under sponsorship of its Attorney General pursuant to Rule 42(4), Rules of the Supreme Court.

[1]The Superior Court of the State of Washington for Thurston County entered judgment on July 18, 1966, declaring invalid § 16, ch. 56, Washington Laws of 1965 because it authorized rent-free use of granted school and other trust lands by the state parks commission. *Cole v. Odegaard*, Cause No. 36798. (See *Brief of the State of Washington as Amicus Curiae on Petition for Writ of Certiorari*, p. 7.) The Washington State Parks and Recreation Commission has given notice of appeal from that judgment to the Washington Supreme Court and accordingly declines to join in this brief.

OPINION BELOW

The opinion of the Supreme Court of Arizona in *State ex rel. Arizona Highway Dep't v. Lassen* (R. 33) is reported at 99 Ariz. 161, 407 P.2d 747.

This court granted the petition for a writ of certiorari on May 2, 1966. 384 U.S. 926.

INTEREST OF THE STATE OF WASHINGTON

1. The State of Washington has received almost three million acres[2] of trust land under the terms of the Enabling Act admitting it to the Union, Act of Feb. 22, 1889 (25 Stat. 676),[3] §§ 10-12, 14-18, as amended (printed as Appendix A, *infra*, pp. 19-26).

2. The Arizona decision concerning the Enabling Act of New Mexico and Arizona is contrary to the administrative determination of the same issue under Washington's Enabling Act. See the opinion of the state Attorney General, printed as Appendix A to the *Brief of the State of Washington as Amicus Curiae on Petition for Writ of Certiorari*, pp. 8-21.

3. The Arizona decision is contrary to the judicial determination of a similar issue under Washington's Enabling Act. On July 18, 1966, the Superior Court of the State of Washington for Thurston

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[2] Dep't of Natural Resources, State of Washington, *Third Biennial Report (Statistical Supplement)* 49 (1963).

[3] Washington's Enabling Act is also the act of admission for the states of North Dakota, South Dakota, and Montana.

County entered judgment in *Cole v. Odegaard*, Cause No. 36798, declaring invalid the following provision of chapter 56, Washington Laws of 1965:

> Sec. 16. State lands used by the state parks commission as public parks shall be rent free.

because it violated Washington's Enabling Act and the companion provisions of the Washington Constitution, art. 16, §§ 1, 2 (printed as Appendix B, *infra*, pp. 26-27). The court ruled that granted school and other trust lands may not be put to state park use without compensation to the trust for which the lands are held. The case is now before the Washington Supreme Court, Cause No. 39133, on appeal of the defendant State Parks and Recreation Commission.[4]

4. The Arizona decision is contrary to the position of the State of Washington in litigation now pending in the United States District Court for the Eastern District of Washington, Northern Division, Civil No. 2619, *United States v. 111.2 Acres of Land*, wherein the state contends that the full market value of an easement in school lands must be ascertained and paid (or safely secured) to the state for the benefit of the common schools before Rev. Code Wash. § 90.40.050 operates to grant that easement to the United States. The state bases its claim on the Washington Enabling Act, §§ 10 and 11 (as amended), Appendix A, *infra*, pp. 19-23, and the companion provisions of the Washington Constitution, art. 16, § 1, Appendix B, *infra*, pp. 26-27.

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[4] See footnote 1, *supra*.

ARGUMENT

Introduction and Summary

New Mexico and Arizona have come to opposite conclusions about their obligation to make compensation for public use of lands granted to them by the federal government under the New Mexico-Arizona Enabling Act.[5] New Mexico holds that the lands may not be diverted from trust purposes without compensation, even for public use, while Arizona holds to the contrary. (Compare *State ex rel. State Highway Comm'n v. Walker*, 61 N.M. 374, 301 P.2d 317 (1956), with *State ex rel. Arizona Highway Dep't v. Lassen*, 99 Ariz. 161, 407 P.2d 747 (1965).) The disagreement arises, at least in part, because the New Mexico-Arizona Enabling Act is silent about the whole matter of putting trust lands to public use.

The resolution of the difference between New Mexico and Arizona is of importance to all western states because all have been the recipients of federal land grants dedicated by Congress in trust for schools and other public institutions. The State of Washington and its sister states of North Dakota, South Dakota, and Montana, for example, received land grants similar to those received by New Mexico and Arizona. See Act of Feb. 22, 1889, 25 Stat. 676, Appendix A, *infra*, pp. 19-26.

A review of the Enabling Act of Washington and her sister states establishes two principles we

[5] Act of June 20, 1910, 36 Stat. 557.

believe are equally applicable to the New Mexico-Arizona Enabling Act:

1. Congress' silence about diverting trust lands to public use means that the lands can be diverted only by exercise of the power of eminent domain, whether the diversion be by the state or by the federal government.

2. The law of eminent domain furnishes the standard to measure the damages to the trust fund for which the lands are held. That standard is the "just compensation" of the Fifth and Fourteenth Amendments to the United States Constitution.[6]

Eminent Domain and Trust Lands

I

As originally enacted, the Washington Enabling Act was silent about procedure whereby public use could be made of granted lands. The general authority for disposal of the lands was set forth in section 11 (25 Stat. at 679) as follows:

> That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands, may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not ex-

[6]Of course a state may set a higher standard of compensation for itself if it so chooses, as Arizona has apparently done by its rule limiting the offset of special benefits. See Ariz. Rev. Stat. § 12-1122, and *Brief for the United States as Amicus Curiae*, p. 18 n.11.

> ceeding one section to any one person or company; * * *

Nonetheless, from the beginning Washington rejected the contention that these restrictions were a limitation of the state's inherent power of eminent domain. *Roberts v. Seattle*, 63 Wash. 573, 116 Pac. 25 (1911); *Tacoma v. State*, 121 Wash. 448, 209 Pac. 700 (1922).[1] But in taking the position it did, Washington found itself at odds with the Montana view of the same Enabling Act provisions. In *State ex rel. Galen v. District Court*, 42 Mont. 105, 112 Pac. 706 (1910), the Montana Supreme Court expressly held that Congress, in making its land grants, intended to divest the state of its power of eminent domain over the granted lands.

On principle it seems clear that the Montana position was wrong. As the Idaho Supreme Court said about that state's granted school lands, *Hollister v. State*, 9 Ida. 8, 71 Pac. 541, 543 (1903):

> But even if congress had the authority, in granting these lands to the state, to restrict and prohibit the state in the exercise of the power of eminent domain, we do not think it was intended or attempted in the admission act. It was evidently the purpose of congress in granting sections 16 and 36 in each township to the state for school purposes to provide that the revenue and income from all such lands should go to the school fund, and that when sold it should be at the highest market price. We cannot believe

[1] The rule of these cases remains the Washington law of today. See *Seattle v. State*, 54 Wn.2d 139, 338 P.2d 126 (1959).

> that congress meant to admit into the Union a new state, and by that very act throttle the purposes and objects of statehood by placing a prohibition on its internal improvements. To prohibit the state the right of eminent domain over all school lands granted would lock the wheels of progress, drive capital from our borders, and in many instances necessitate settlers who have taken homes in the arid portions of the state seeking a livlihood elsewhere.

The weight of authority is against the Montana decision. So far as we can ascertain, all states save North Dakota (see, *infra*, p. 12 n.11), have construed federal land grants in accordance with the Washington-Idaho position.[8] The federal courts have rejected the Montana decision, *United States v. Montana*, 134 F.2d 194 (9th Cir.), *cert. denied*, 319 U.S. 772 (1943), and uniformly hold that federal land grant legislation no more limits the United States' power of eminent domain than it does the states'. *E.g.*, *United States v. 40 Acres*, 24 F. Supp. 390 (E.D. Ida. 1938); *United States v. 2715.98 Acres of Land*, 44 F. Supp. 683 (W.D. Wash. 1942).

II

The disagreement of Washington and Montana over the effect of their common Enabling Act did serve a useful purpose. The conflict justified a re-

[8]See *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Ida. 695, 151 Pac. 998, 1001 (1915); *Ross v. Trustees of University*, 30 Wyo. 433, 222 Pac. 3, *on rehearing* 31 Wyo. 464, 228 Pac. 642 (1924); *Grossetta v. Choate*, 51 Ariz. 248, 75 P.2d 1031 (1938); *State v. Platte Valley Power & Irrigation Dist.*, 143 Neb. 661, 10 N.W.2d 631 (1943); *State ex rel. State Highway Comm'n v. Walker*, 61 N.M. 374, 301 P.2d 317 (1956).

view of the matter by Congress, and Congress permanently set the matter at rest by expressly adopting the Washington view that Enabling Act provisions do not limit a state's power of eminent domain. Amendments in 1921[9] and 1932[10] added the following provisions to section 11:[11]

> The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however*, That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.

Under this provision each state is left free as to the *manner* in which it will exercise its power of eminent domain. It may be exercised in court, of course, but it may also be exercised outside of court in administrative proceedings. The out-of-court exercise of the power has long been a part of Washington law. *E.g., State ex rel. Washington Water Power Co. v. Savidge*, 75 Wash. 116, 134 Pac. 680 (1913); *State ex rel. Polson Logging Co. v. Superior*

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[9] Act of Aug. 11, 1921, 42 Stat. 158.

[10] Act of May 7, 1932, 47 Stat. 150.

[11] The North Dakota Supreme Court overlooked the amendment to § 11 in 1941 when it decided *State Highway Comm'n v. State*, 70 N.D. 673, 297 N.W. 194 (1941), on the authority of *State ex rel. Galen v. District Court*, 42 Mont. 105, 112 Pac. 706 (1910).

Court, 11 Wn.2d 545, 119 P.2d 694 (1941). It is an exception to this state's preference for in-court proceedings, Wash. Const. amend. 9, made possible by the state constitution's silence about condemnation of state-owned property. *State ex rel. Mason County Power Co. v. Superior Court*, 99 Wash. 496, 169 Pac. 994 (1918).

III

By the amendments to the common Enabling Act of Washington, North Dakota, South Dakota, and Montana, Congress has corrected any inference that granted trust lands are not subject to a state's inherent power of eminent domain. This clear expression of congressional intent is entitled to considerable weight outside the four states directly involved. The same congressional policy to promote education in Washington and her sister states, *Johanson v. Washington*, 190 U.S. 179, 183 (1903), underlies the land grants made to other states, including New Mexico and Arizona, *Brief for the United States as Amicus Curiae*, pp. 7-10, *and Brief of Petitioner*, pp. 19-26.

Compensation for Non-Trust Use of Granted Lands

When Congress made its land grants to the newly formed states of the west, it might have made grants unrestricted as to purpose. U. S. Const. art. 4, § 3, cl. 2; *cf. Alabama v. Texas*, 374 U.S. 272 (1954). But Congress did not choose to do so. Instead, Congress specified the particular objects of its bounty

and made its land grants in trust for those purposes. That choice was also within its power. *Ibid.* Thus the fundamental issue in this case reduces itself to this: What does federal law require as the minimum standard or measure of compensation when a state exercises its power of eminent domain to extinguish the trust as to particular granted lands?

Whether the issue be answered on theoretical grounds or merely practical grounds, we believe that the minimum standard of compensation must be the "just compensation" of the Fifth and Fourteenth Amendments to the United States Constitution.

I

If we approach the matter on a theoretical basis, the just compensation rule has the obvious merit of comporting with congressional intent. Congress, as we have seen, had no intention of immunizing its land grants from state condemnation power. A state may therefore extinguish federally created rights in trust lands and in its beneficiaries by exercise of state eminent domain power. However, any exercise of of this power by a state is subject to the due process clause of the Fourteenth Amendment which imposes an obligation to pay "just compensation" similar to that required of the United States by the Fifth Amendment.[12] *E.g., Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226, 241 (1897); *Appleby*

[12]State-owned property is "private property" under the Fifth Amendment. See, *e.g., St. Louis v. Western Union*, 148 U.S. 92, 100-101 (1893); *United States v. Carmack*, 329 U.S. 230, 242 (1946). By analogy, federally created rights in the beneficiaries of granted lands are "private property" under the Fourteenth Amendment.

v. Buffalo, 221 U.S. 524 (1911); *Olson v. United States*, 292 U.S. 246, 254 (1934); *West v. Chesapeake & P. Tel. Co.*, 295 U.S. 662, 671 (1935).

If the funds for which granted lands are held in trust receive "just compensation" these funds receive the equivalent of what they would have received if the lands had been sold by the usual public sale, *cf. Roberts v. Seattle*, 63 Wash. 573, 116 Pac. 25 (1911), and the policy behind the federal land grants is achieved.

For an express statement of congressional intent on this point, we must again turn to the Enabling Act of Washington and her sister states of North Dakota, South Dakota, and Montana. In 1932 Congress amended section 11 and for the first time prescribed a standard of compensation for the state that chooses to devote trust lands to non-trust public use. That amendment[13] provided:

> The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however*, That none of such lands nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, or unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.

[13] Act of May 7, 1932, 47 Stat. 150.

The standard of compensation is taken almost word for word from section 1, article 16, of the Washington Constitution (Appendix B, *infra*, p. 26). It was thus a standard which had already received prior judicial consideration. In 1911 the Washington Supreme Court held that a condemnation award for the taking of a street easement satisfied the "full market value" requirement of the constitutional provision. *Roberts v. Seattle*, 63 Wash. 573, 116 Pac. 25 (1911).

II

As a practical matter, the federal just compensation rule is the only measure for compensation that can be conveniently administered as a minimum federal standard when a state condemns granted trust lands and thereby appropriates them to necessary but non-trust use.

First, the convenience of this court will be served by the adoption of the Fifth and Fourteenth Amendment just compensation rule. This is a ready-made body of law with which all courts and lawyers are presently familiar. By its adoption the court will therefore avoid the necessity of fashioning a substitute body of law on a time-consuming, case by case basis.

Second, adoption of the just compensation rule will serve the convenience of the affected states by making the compensation rule governing condemnations by the United States applicable to an exercise of the state's power of eminent domain over the same lands.

Under present law the United States pays just compensation to the states when it takes school and other granted trust lands by condemnation. *E.g.*, *Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947); *United States v. Montana*, 134 F.2d 194 (9th Cir.), *cert. denied*, 319 U.S. 772 (1943); *United States v. 2902 Acres of Land*, 49 F. Supp. 595 (D. Wyo. 1943); *United States v. 2715.98 Acres of Land*, 44 F. Supp. 683 (W.D. Wash. 1942); *United States v. 40 Acres*, 24 F. Supp. 390 (E.D. Ida. 1938). It does so because state-owned lands are deemed "private property" within the meaning of the Fifth Amendment when the United States takes them for public use. *St. Louis v. Western Union*, 148 U.S. 92, 100-101 (1893); *Wayne County v. United States*, 53 Ct. Cl. 417 (1918), *aff'd*, 252 U.S. 574 (1920); *United States v. Carmack*, 329 U.S. 230, 242 (1946).

The convenience of the states will be served by one federal rule governing appropriations by the federal government and appropriations by the state itself. This is so because the state's title to granted lands is that of a trustee. Therefore, every time granted lands are appropriated for public use the state's interests as trustee conflict with its interests as condemnor. Resolution of the conflict by reference to an external measure of damages eases this internal conflict.

Third, adoption of the federal just compensation rule will implement congressional policy. Under the Fifth and Fourteenth Amendments just com-

pensation implies a full and complete equivalent, usually monetary, for the loss sustained by the owner whose land has been taken or damaged. 1 Nichols, *Eminent Domain* § 8.6 (1965). It means compensation just to the condemnor and to the condemnee. *Id.*, § 8.6[1]. Therefore utilization of the rule will assure the funds for which trust lands are held (owners, in a sense) of the full market value of the property lost to it, which was after all the ultimate purpose of Congress when it made its grants to the states.

III

The fixing of a minimum federal standard in no way detracts from a state's right to make compensation at a higher standard in accordance with its local law of eminent domain. If Arizona, for example, has done this by enactment of a rule limiting the offset of special benefits, see Ariz. Rev. Stat. § 11-1122,[14] there can be no federal objection to such a rule. Similarly there can be no federal objection to a Nebraska rule, see *Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947), disregarding encumbrances when compensation is fixed for the condemnation of trust lands under authority of Nebraska law.

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[14]See, also, *Brief for the United States as Amicus Curiae*, p. 18, n.11.

CONCLUSION

The judgment of the court below should be reversed and the case remanded.

Respectfully submitted,

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October, 1966.

APPENDIX A

Act of February 22, 1889, ch. 180, 26 Stat. 676 (the Enabling Act of Washington, North Dakota, South Dakota, and Montana).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.**

* * *

Sec. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have

been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of the common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

Sec. 11.[15] That all lands granted by this Act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than $10 per acre and lands principally valuable for grazing purposes for not less than $5 per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such

[15] As amended by Act of August 11, 1921, 42 Stat. 158; Act of May 7, 1932, 47 Stat. 150; Act of June 25, 1938, 52 Stat. 1198; Act of April 13, 1948, 62 Stat. 170; Act of June 28, 1952, 66 Stat. 283; and Act of May 31, 1962, 76 Stat. 91.

exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the State.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for the exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective States; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however*, That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and

from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various State institutions for which the lands have been granted, except that proceeds from the sale and other permanent disposition of the two hundred thousand acres granted to the State of Washington for State charitable, educational, penal, and reformatory institutions may be used by such State for the construction of any such institution. Rentals on leased land, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any State may, however, in its discretion, add a portion of the annual income to the permanent funds. Notwithstanding the foregoing provisions of this section, each of the states of North Dakota, South Dakota, and Washington may pool the moneys received by it from oil and gas and other mineral leasing of said lands. The moneys so pooled shall be apportioned among the public schools and the various State institutions in such manner that the public schools and each of such institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted by this Act. Not less than 50 per centum of

such amount shall be covered into the appropriate permanent fund.

The lands hereby granted shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

Sec. 12.[16] That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this Act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.

* * *

Sec. 14. * * * And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four,

[16] As amended by Act of Feb. 26, 1957, 71 Stat. 5.

will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section 11 of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. * * *

Sec. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby, granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. * * *

Sec. 16. That ninety thousand acres of land, to be selected and located as provided in section ten of

this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of lands for such purpose.

Sec. 17. That in lieu of the grant of lands for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to-wit:

* * *

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide.

Sec. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

* * *

APPENDIX B

Washington Constitution, article 16, sections 1 and 2.

SCHOOL AND GRANTED LANDS

§ 1. *Disposition of.* All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest is disposed of, to be ascer-

tained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

§ 2. *Manner and Terms of Sale.* None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: Provided, That the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.